IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 4001 of 2005(B)

PETITIONER:

G.ANIL KUMAR, THODUVAYAL,
KUNNATHOOR EAST POST, KOLLAM DISTRICT,
SELECTION GRADE ASSISTANT, DIST.INSPECTION
SQUAD, KOLLAM.

BY ADV. SRI.P.SANTHALINGAM
SRI.INNOCENT FRANCIS PAPALI

RESPONDENTS:

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1. GOVERNMENT OF KERALA,
REP. BY CHIEF SECRETARY, GOVT. OF KERALA,
THIRUVANANTHAPURAM.

2. PRINCIPAL SECRETARY,
FINANCE DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

3. DISTRICT FINANCE INSPECTING OFFICER,
COLLECTORATE, KOLLAM.

BY GOVERNMENT PLEADER (FINANCE) SRI.N.MANOJ KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE MEMO NO.110597/ADMN.A2/02/FIN. DTD. 6.4.2002.

EXT.P2: COPY OF THE G.O.(RT) NO. 2702/02/ FIN. DTD. 22.5.2002.

EXT.P3: COPY OF G.O.(RT). NO. 2983/02/FIN. DTD. 7.6.2002.

EXT.P4: COPY OF THE LETTER DTD. 2.9.2002 SENT BY THE ENQUIRY OFFICER.

EXT.P5: COPY OF the REPLY OF THE R.T.O. KOLLAM TO THE DISTRICT FINANCE INSPECTING OFFICER, KOLLAM.

EXT.P5(a): COPY OF THE LETTER OF THE POLICE SUB INSPECTOR, KOLLAM TO THE DISTRICT FINANCE INSPECTING OFFICER.

EXT.P6: COPY OF THE G.O.(RT) NO. 323/2003/FIN. DTD. 14.1.2003.

EXT.P7: COPY OF THE CIRCULAR NO. 65/94/FIN. DTD. 26.11.1994.

EXT.P8: COPY OF THE LETTER DTD. 17.1.2003 SENT MY THE PETITIONER TO THE PRINCIPAL SECRETARY. GOVT. OF KERALA.

EXT.P9: COPY OF THE MEMO NO. 110597/ADMN.A2/2001/FIN. DTD. 31.01.2003.

EXT.P10: COPY OF THE OFFICE ORDER NO. 5303/ADMN.A2/2002/FIN. DTD. 31.01.2003 ADMITTING THE PETITIONER TO DUTY AND POSTING HIM IN THE P.F.SECTION.

EXT.P11: COPY OF THE OFFICE ORDER NO.14667/ADMN.32/2003/FIN. DTD. 05.03.2003.

EXT.P12: COPY OF THE LETTER NO. MH I/1258/2003/HS/ DTD. 10.04.2003 RECEIVED FROM THE DIRECTOR, HEALTH SERVICES, THIRUVANANTHAPURAM BY THE PETITIONER.

EXT.P13: COPY OF THE MEMO NO. 18109/ADMN.A2/2003/FIN. DTD. 21.7.2003 ISSUED BY GOVERNMENT OF KERALA, FINANCE DEPARTMENT.

EXT.P13(a): COPY OF THE LETTER NO. 1/12558/2003/DEB DTD. 15.07.2003 ISSUED BY DIRECTORATE OF HEALTH SERVICES, TVM, TO THE PETITIONER.

EXT.P14: COPY OF THE LETTER NO.MH I-12558/03/DHB DTD. 26.07.2003 ISSUED BY THE CHAIRMAN, STANDING MEDICAL BOARD, TVM TO THE PROFESSOR AND HEAD DEPARTMENT OF PSYCHIATRY TVM.

EXT.P15: COPY OF THE DISCHARGE CARD DTD. 18.08.2003 ISSUED BY DIRECTORATE OF MEDICAL EDUCATION.

EXT.P16: COPY OF THE MEMO NO. 89544/ADMN/A2/2003/FIN. DTD. 9.10.2003 ISSUED BY GOVT. OF KERALA, FINANCE (ADMN) A DEPT, TVM.

EXT.P17: COPY OF THE LETTER DTD. 3.10.2003 SENT BY DR. RAMACHANDRAN, PROF. & HEAD OF DEPT. OF PSYCHOMETRIC TO THE PRINCIPAL SECRETARY (FINANCE).

EXT.P18: COPY OF THE LETTER DTD. 18.08.2003 SENT BY DR. A. RAMACHANDRAN PROF. & HEAD, TVM, TO THE PROFESSOR & HEAD , DEPT. OF MEDICINE, TVM.

EXT.P19: COPY OF THE LETTER NO. (L.DIS). MN-1 12558/2003/DMB DTD.8.12.2003 SENT BY THE DIRECTORATE OF HEALTH DEPT. TO THE PRINCIPAL SECRETARY TO GOVT. FINANCE DEPT. TVM.

EXT.P19(a): COPY OF THE MEDICAL CERTIFICATE DTD. 27.11.2003.

EXT.P20: COPY OF THE MEMO NO. 13026/ADMN.A2/2004/FIN. DTD. 10.3.2004.

EXT.P21: COPY OF THE MEMO NO. 72047/ADMN.A2/2004/FIN. DTD.29.7.2004.

EXT.P22: COPY OF THE MEMO. NO. 72647/ADMN.A2/2004/FIN. DTD. 29.7.2004.

EXT.P23: COPY OF THE SELECT LIST DTD. 24.6.2002 PUBLISHED BY 2ND RESPONDENT.

EXT.P24(a): COPY OF THE SELECT LIST FOR 2003 DTD. 30.6.2003.

EXT.P24(b): COPY OF THE SELECT LIST FOR 2004 DTD. 19.04.2004.

EXT.P25: COPY OF THE MEMO NO. 81382/332/03/FIN. DTD. 11.11.2003.

EXT.P26: COPY OF THE MEMO NO. 37169/SSC/2004/FIN. DTD 10.11.2004.

EXT.P27: COPY OF THE MEMO. NO.110597/ADMN.A2/2001FIN. DTD. 21.2.2003.

EXT.P28: COPY OF THE GOVT.ORDER NO. G.O.(RT) 1793/2003/FIN. DTD. 15.3.2003.

EXT.P29: COPY OF THE MEMO NO. 112649/ADMN.A2/2004/FIN. DTD. 2.12.2004.

EXT.P30: COPY OF THE SELECT LIST FOR THE YEAR DTD. 14.1.2005.

EXT.P31: COPY OF G.O.(RT). 651/2005/FIN. DTD. 22.01.2005.

RESPONDENT'S EXHIBITS:

EXT.R2(a): COPY OF THE SUBMISSION MADE BY THE PETITIONER DTD. 22.12.2001.

EXT.R2(b): COPY OF THE LETTER DTD. 23.01.2002 SENT FROM THE OFFICE OF THE REGIONAL TRANSPORT OFFICER, KOLLAM.

EXT.R2(c): COPY OF THE REPORT SENT BY THE SUB INSPECTOR OF POLICE, KOLLAM WEST TO THE DISTRICT FINANCE INSPECTING OFFICER.

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// TRUE COPY //

K. BALAKRISHNAN NAIR, J.

W.P.(C) No.4001 of 2005-B

JUDGMENT

The petitioner, who is presently working as Section Officer in the Finance Department of the Administrative Secretariat, has approached this Court, challenging Exts.P6 order and P26 memo.

2. The brief facts of the case are the following: The petitioner joined the Administrative Secretariat as Assistant Grade II on 25.7.1990. In due course, he was promoted as Assistant Grade I and later as Senior Grade Assistant. Finally, he was promoted as Selection Grade Assistant on 2.7.1999. While he was working in the Finance Inspection Wing in Kollam Collectorate, he went to the Regional Transport Office on 19.12.2001. Reports were received that he misbehaved there and therefore, he was served with Ext.P1 show-cause notice on 6.4.2002. The petitioner submitted Ext.R2(a) reply to the said notice. Finally, the disciplinary proceedings were finalised by Ext.P6 order of the Government dated 14.1.2003, by imposing a penalty of barring two increments without cumulative effect. The said order has become final. Though, the petitioner was included in the list

of officers eligible for appointment to the post of Section Officer for the year 2002 (Ext.P3), he was not promoted because of the above punishment. He was also not included in the D.P.C lists for the years 2003 and 2004. Though, the petitioner represented against his non-inclusion in the D.P.C list for the year 2003, the same was rejected by Ext.P25 memo. His representation against the D.P.C list for the year 2004 was rejected by Ext.P26 memo. Later, he was included in the list for the year 2005 (Ext.P30) and was promoted as Section Officer by Ext.P31 order dated 22.1.2005. This writ petition was filed challenging Exts.P6 and P26. According to the petitioner, his supersession was unjustified and therefore, he is entitled to be included in the list for the year 2003 and promoted as Section Officer.

3. The 2nd respondent has filed a counter affidavit, resisting the prayers in the writ petition.

4. Heard the learned counsel on both sides. Ext.P6 order is dated 14.1.2003 and this writ petition was filed on 2.2.2005. So, the challenge against Ext.P6 is highly belated. Apart from that, going by Ext.R2(a) reply to Ext.P1, practically there is no denial from the part of

the petitioner against the misconduct alleged. Therefore, on merits also there is nothing wrong with Ext.P6. When Ext.P6 is remaining in force, the petitioner cannot be normally included in the select list, which is prepared based on merit-cum-seniority basis. If only the punishment is censure, it can be ignored. So, his non-inclusion in the lists for the years 2003 and 2004 is fully justified. Therefore, the challenge against Ext.P26 also cannot be upheld. None of the affected parties is impleaded in the writ petition. For this reason also, no relief could be granted to the petitioner.

In the result the writ petition is dismissed.

K. BALAKRISHNAN NAIR,
JUDGE.

25th July, 2007.
nm.